



Federal Communications Commission
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DA 10-1343

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Dear Mr. Lavergne and Ms. Balaguer:

On June 10, 2010, The School Board of Palm Beach County (Palm Beach), licensee of Educational Broadband Service (EBS) Stations WQIZ681 and WQIZ682 (the Palm Beach Licenses), requested confirmation that the geographic service areas (GSAs) of the Palm Beach Licenses “split the football” with co-channel EBS Station WHR895, licensed to Florida Atlantic University Board of Trustees (FAU).¹ Palm Beach also requests confirmation that the GSAs of Stations WQIZ681 and WQIZ682 are identical. For the reasons stated below, we grant the Request.

FAU is the licensee of EBS Stations WHR877, WHR894, and WHR895 (FAU Licenses). On September 25, 1998, the Commission released the *Two-Way Order*, which, among other things, granted all Instructional Television Fixed Service (ITFS) licensees a Protected Service Area (PSA) and individual protection to all receive sites registered through the date of the adoption of the *Two-Way Order*.² In the *Two-Way Reconsideration Order*, the Commission affirmed its decision.³ In the *Two-Way Second Reconsideration Order*, however, the Commission reversed its decision and concluded that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection because secondary stations, usually studio to transmitter links, have not traditionally been given protection relative to primary stations.⁴

On July 29, 2004, the Commission released the *BRS/EBS R&O*, which granted all ITFS incumbents a GSA based on their existing PSA.⁵ In the case of overlapping GSAs, the Commission

¹ Letter from Edwin N. Lavergne, Esq. and Donna A. Balaguer, Esq., counsel to The School Board of Palm Beach County to John J. Schauble, Wireless Telecommunications Bureau, Request for Confirmation (filed Jun. 10, 2010) (Request).

² Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order*, MM Docket No. 97-217, 13 FCC Rcd 19112, 19173 ¶ 114 (1998).

³ Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Order on Reconsideration*, MM Docket No. 97-217, 14 FCC Rcd 12764, 12773-12774 ¶ 20 (1999).

⁴ Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 97-217, 15 FCC Rcd 14566, 14572 ¶ 24 (2000) (*Two-Way Second Reconsideration Order*).

⁵ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands,

adopted a method for dividing overlapping GSAs, which is commonly known as “splitting the football.”⁶ On June 28, 2005, the Wireless Telecommunications Bureau released a Public Notice announcing that the Commission’s Universal Licensing System would implement the adoption of geographic licensing for the Broadband Radio Service and the Educational Broadband Service.⁷ The Public Notice stated that “[a]ny BRS or EBS main station license listed on ULS with a protected service area (PSA) based on a 35 mile radius, will be converted to a geographic license with a P35 geographic service area GSA based on the PSA coordinates listed on the license.”⁸ On July 9, 2005, as part of the conversion of BRS and EBS to ULS, the license records for the FAU Licenses were changed to state that the licenses for the Stations were converted to GSAs “in accordance with Rule 27.1206.”⁹ On September 11, 2006, FAU asked the Division for confirmation that the Stations had received a GSA based on the *BRS/EBS R&O*.¹⁰ On December 4, 2006, the FAU licenses were amended to note that “[b]ecause these stations were originally licensed as studio-to-transmitter links on a secondary basis, the station does not have a geographic service area.”¹¹ The Broadband Division (Division) of the Wireless Telecommunications Bureau (Bureau) subsequently denied FAU’s petition for reconsideration of that action.¹²

On April 25, 2008, the Bureau granted a waiver request filed by FAU to grant the FAU Stations GSAs.¹³ In granting the waiver, the Bureau relied on the fact that Palm Beach and the School Board of Miami-Dade County supported the waiver request so long as their GSAs were not reduced.¹⁴ The licenses were conditioned to exclude any area that overlapped with the GSA of a neighboring co-channel EBS license.¹⁵

FAU then assigned to Palm Beach, through disaggregation, Channel A4 on the licenses for Stations WHR877 and WHR894.¹⁶ As part of that transaction, Palm Beach was issued new licenses under call signs WQIZ681 and WQIZ682.¹⁷

Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, 19 FCC Rcd 14165, 14190-14191 ¶ 55 (2004).

⁶ *Id.* at 14192-14193 ¶¶ 60-63.

⁷ Wireless Telecommunications Bureau Announces Change to the Universal Licensing System (ULS) to Accommodate the Broadband Radio Service and Educational Broadband Service and Reminds Licensees the Use of ULS Forms and Electronic Filing for These Service Becomes Mandatory on July 11, 2005, *Public Notice*, 20 FCC Rcd 11554 (2005).

⁸ *Id.*, 20 FCC Rcd at 11554-11555.

⁹ 47 C.F.R. § 27.1206.

¹⁰ Waiver Request at 2.

¹¹ See Universal Licensing System records for Stations WHR877, WHR894, and WHR895.

¹² See Florida Atlantic University, *Order on Reconsideration*, 22 FCC Rcd 12839 (WTB BD 2007).

¹³ See Florida Atlantic University, *Order on Further Reconsideration*, 23 FCC Rcd 6914 (WTB 2008).

¹⁴ *Id.* at 6918 ¶ 10.

¹⁵ *Id.* at 6919 ¶ 14.

¹⁶ See File Nos. 0003346846, 0003346857 (consented to Apr. 29, 2008, consummated Jun. 16, 2008).

¹⁷ We note that although the main tabs in the Universal Licensing System for these licenses list Channels A1-A4, the Market tabs correctly indicates that only Channel A4 is included in the Palm Beach Licenses.

Palm Beach states its understanding that the Palm Beach Licenses do not intrude into the GSAs of EBS licenses KZB28 and WHA956.¹⁸ It believes, however, that the FAU Licenses split the football with each other, and that the Palm Beach Licenses would therefore “split the football” with the GSA of FAU’s Station WHR895.¹⁹ Palm Beach also requests confirmation that both Palm Beach Licenses have the same GSA because they share the same reference coordinates on the same channel.²⁰ It states that if the understanding is correct, it intends to “return one of the licenses to the Commission.”²¹ The Request is unopposed.²²

We agree with Palm Beach that Stations WHR895, WQIZ681, and WQIZ682 split the football with each other. Section 27.1206(a)(1) of the Commission’s Rules defines the GSAs of stations with overlapping protected service areas.²³ While those licenses either did not exist or did not have GSAs until 2008, nothing in the rules provides that the normal splitting the football process would not apply to those licenses *vis-à-vis* each other. Furthermore, while the Bureau held that the GSAs of the FAU Licenses “shall not include any area that overlaps with the Geographic Service Area of a neighboring co-channel EBS licensee,”²⁴ we believe the logical interpretation of the term “neighboring” licensee is to refer to licenses other than the FAU Licenses. Since the Palm Beach Licenses were formed through disaggregation of the FAU Licenses, we believe Section 27.1206(a)(1) of the Commission’s Rules should apply to Stations WHR895, WQIZ681, and WQIZ682 *vis-à-vis* each other.

We also confirm that Stations WQIZ681 and WQIZ682 share the same GSA. As Palm Beach notes, both stations have the same reference coordinates²⁵ and are on the same channel.

¹⁸ Request at 2. In addition, the GSA of the Palm Beach Licenses does not include any portion of the GSA of EBS Station WLX391.

¹⁹ Request at 2.

²⁰ *Id.*

²¹ *Id.*

²² We will treat the Request as a request for declaratory ruling. See 47 C.F.R. § 1.2.

²³ See 47 C.F.R. § 27.1206(a)(1).

²⁴ See Florida Atlantic University, *Order on Further Reconsideration*, *supra*, 23 FCC Rcd at 6919 ¶ 14.

²⁵ The reference coordinates for both licenses are 26-22-18.3 North Latitude, 80-06-13.2 West Longitude.

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.2 and 27.1206 of the Commission's Rules, 47 C.F.R. §§ 1.2, 27.1206, that the Request for Confirmation filed by The School Board of Palm Beach County on June 10, 2010 IS GRANTED to the extent indicated.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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